

## **REMARKS**

This is a response to the Office Action dated September 3, 2008. Claims 92-97, 100-106, 109-115 and 118-124 were pending in the application at the time of examination.

In the Office Action, claims 92-94, 96 and 100 are rejected on the ground of non-statutory obviousness-type double patenting over claims 1, 27, 43, 57, 59-61, 75, 80 and 82 of U.S. Patent No. 6,961,641 ("Forth") in view of U.S. Patent No. 6,975,619 ("Byers").

Claims 118 and 119 are rejected on the ground of non-statutory obviousness-type double patenting over claims 1, 2 and 6 of U.S. Patent No. 6,990,395 ("Ransom '395") in view of Byers.

Claims 118, 120 and 124 are rejected on the ground of non-statutory obviousness-type double patenting over claims 1, 4, 10, 12 and 15 of U.S. Patent No. 7,248,978 ("Ransom '978") in view of Byers.

Claims 118 and 122 are provisionally rejected on the ground of non-statutory obviousness-type double patenting over claims 14-17 of co-pending U.S. Application Serial No. 11/497,218 ("Cumming") in view of Byers.

Claims 118 and 119 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,954,814 ("Leach") in view of Byers.

Claims 92-97, 100-106, "19-115" and 118-124 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 7,027,773 ("McMillin") in view of Byers, and further in view of applicants' alleged admitted prior art in the instant specification.

The rejections from the Office Action dated September 3, 2008 are discussed below. No new matter has been added. Reconsideration of the application is respectfully requested in light of the following remarks.

### **I. NON-STATUTORY DOUBLE PATENTING REJECTIONS**

Claims 92-94, 96 and 100 are rejected on the ground of non-statutory double patenting over claims 1, 27, 43, 57, 59-61, 75, 80 and 82 of Forth in view of Byers. Claims 118 and 119 are rejected on the same grounds over claims 1, 2 and 6 of the Ransom '395 patent in view of Byers. Claims 118, 120 and 124 are rejected on the ground of non-statutory double patenting over claims 1, 4, 10, 12 and 15 of the Ransom '978 patent in view of Byers. Claims 118 and 122 are provisionally rejected on the same grounds over claims 14-17 of Cumming in view of Byers.

Each of the double patenting rejections in the Office Action relies on the teachings of Byers for the claim limitations “wherein said processor further is operative to determine a geographical location of said energy management device” and “wherein said power management data may be authenticated based on said geographical location.” However, as will be explained in further detail below, Byers does not teach or suggest such limitations.

Accordingly, applicants submit that the arguments below concerning independent claims 92, 101, 110 and 118 overcome all of the non-statutory double patenting rejections.

## **II. REJECTIONS UNDER 35 U.S.C. § 103(a)**

### **A. Independent Claims 92, 101, 110 and 118**

Independent claims 92, 101 and 118 are rejected under 35 U.S.C. § 103(a) as being unpatentable over McMillin in view of Byers. Independent claim 118 also is rejected under 35 U.S.C. § 103(a) as being unpatentable over Leach in view of Byers.

Due to an apparent typographical error in the Office Action, the basis of rejection to independent claim 110 is unclear. Specifically, on page 6 of the instant Office Action, the Examiner writes “[c]laims 92-97, 100-106, 19-115 and 118-124....” (emphasis added). It is unclear whether “19” was intended to be “109,” and therefore the grouped rejection would encompass independent claim 110. Applicants note that the Examiner has not specifically enumerated any rejection to claim 110 in the instant Office Action. Applicants respectfully request clarification in the next Action, if the rejection remains.

Each of independent claims 92, 101 and 118 currently requires an energy management device... “*wherein said power management data may be authenticated based on said geographical location.*” Similarly, method claim 110 requires “authenticating at least one of said power management data or said power management command based on said geographical location.”

Neither the combination of Leach and Byers, nor McMillin and Byers, teaches or suggests applicants’ invention of independent claims 92, 101, 110 and 118. There is simply no remote teaching or suggestion in Leach, McMillin, nor Byers concerning authentication of power management data based on a geographical location of an energy management device, and no combination of these references will yield this claimed subject matter.

First, Leach is directed to a “method and system for monitoring utility meter status, and transmitting a status message via an output device connected to a universal communications interface in the event that the utility meter status meets a predetermined condition.” (see, e.g., Leach Abstract). The Examiner correctly notes that “Leach does not disclose the limitations ‘wherein said processor further is operative to determine a geographical location of said energy management device’ and ‘wherein said power management data may be authenticated based on said geographical location.’” (See Office Action dated September 3, 2008, at page 5).

Next, McMillin is directed to “a wireless network of intelligent transceiver nodes which employ local processing and node-to-node data messaging to hand off messages from an origination point to a destination point.” (see, e.g., McMillin at col. 1, lines 12-16). The Examiner correctly notes that “McMillin does not disclose the limitations ‘wherein said processor further is operative to determine a geographical location of said energy management device’ and ‘wherein said power management data may be authenticated based on said geographical location.’” (See Office Action dated September 3, 2008, at page 6).

The Examiner relies on the teachings of Byers to provide the suggestion of the claim limitations for “wherein said processor further is operative to determine a geographical location of said energy management device” and “wherein said power management data may be authenticated based on said geographical location.” In particular, the Examiner repeatedly copies and cites two passages of Byers, namely the Abstract and Claim 29 of Byers. Neither of these passages, nor the rest of the Byers’ patent, teaches or suggests the above-mentioned limitations of applicants’ independent claims 92, 101, 110 and 118.

The Byers’ Abstract teaches that “geographic location information is provisioned or derived at nodes that comprise the network. Upon a request from a requesting node, the geographic location information of one or more target nodes is provided to the requesting node.” However, even assuming that a node in a network can derive its geographical information, the Byers’ Abstract clearly makes no teaching or suggestion concerning “wherein said power management data may be authenticated based on said geographical location.” The Examiner appears to rely on claim 29 of Byers in connection with this limitation.

However, claim 29 of Byers recites, *inter alia*, “said requesting node serving on authenticating entity in a packet data session and said node to be located serving an information providing entity in said packet data session.” (see Byers’ claim 29). In view of the multiple

typographical errors in this cited claim, applicants cannot ascertain the meaning of the claim. The Examiner has provided no interpretation for this sentence (which was copied directly into the Office Action with the various unintelligible typographical errors). In any event, applicants respectfully submit that this cited passage does not teach or suggest authenticating any data based on a geographical location, much less “wherein said power management data may be authenticated based on said geographical location.”

At best, Byers’ teaches apparent authentication in connection with an “emergency response center,” “online merchandising system,” and “online electronic voting system.” However, there is no remote teaching or suggestion in Byers concerning anything relating to an energy management device or a power management application, and in particular, the teaching or suggestion of “wherein said power management data may be authenticated based on said geographical location.”

In sharp contrast to Byers, applicants’ specification teaches, without limitation, an IED having the “functionality to determine the geographic location of the IED.... Such location information can be transmitted along with other power management data as one factor used in authenticating the transmitted data.” (see, e.g., applicants’ specification at paragraph 0064; emphasis added). As another non-limiting example, “[a]uthentication is the process of determining and verifying whether the IED 102-109 transmitting data or receiving commands is the IED 102-109 it declares itself to be and in one embodiment authentication includes parameters such as time/date stamps, digital certificates, physical locating algorithms such as cellular triangulation, serial or tracking ID’s, which could include geographic location such as longitude and latitude. Authentication prevents fraudulent substitution of IED 102-109 devices or spoofing of IED 102-109 data generation in an attempt to defraud. Authentication also minimizes data collection and power distribution system 101 control errors by verifying that data is being generated and commands are being received by the appropriate devices.” (see, e.g., applicants’ specification at paragraph 0074; see also applicants’ specification at paragraph 0079).

Since neither Leach, McMillin, nor Byers, whether alone or in combination, teach “wherein said power management data may be authenticated based on said geographical location,” they do not teach or suggest each limitation of independent claims 92, 101, 110 and 118. These independent claims therefore are allowable for at least the reasons set forth above.

**B. Rejections to Dependent Claims 93-97, 100, 102-106, 109, 111-115 and 119-124**

Dependent claims 93-97, 100, 102-106, 109, 111-115 and 119-124 are rejected under 35 U.S.C. § 103(a). For at least the reasons set forth above, independent claims 92, 101, 110 and 118 are allowable over the combination of Leach and Byers and the combination of McMillin and Byers. Therefore, for at least the reasons that independent claims 92, 101, 110 and 118 are allowable, applicants respectfully submit that dependent claims 93-97, 100, 102-106, 109, 111-115 and 119-124 also are in condition for allowance.

Further, applicants respectfully submit that, contrary to the Examiner's assertion, there has been no admission of prior art made in applicants' specification in connection with dependent claims 96, 97, 105, 106, 114, 115, 122 and 123. The Examiner suggests that the statement "cellular modems further provide the functionality to determine the geographic location of the IED using cellular RF triangulation" is an acknowledgement of prior art. (see Office Action dated September 3, 2008, at pages 6-7). However, the quoted statement is not admitted prior art for various reasons, for example, because it is made in the "Detailed Description of the Presently Preferred Embodiments" section of the specification, and statements made in the Detailed Description section should not be presumed as an admission of prior art. Moreover, even assuming, *arguendo*, that determining a geographic location is known, there is absolutely no remote admission in applicants' specification associated with the other patentable concepts explained above with respect to independent claims 92, 101, 110 and 118.

For at least the reasons set forth above, applicants respectfully submit that dependent claims 93-97, 100, 102-106, 109, 111-115 and 119-124 are in condition for allowance.

**III. NEW DEPENDENT CLAIM 125**

Applicants have added new dependent claim 125, which depends from independent claim 92, and recites "wherein said network interface is operative to facilitate communications of said power management data and said geographical location over said network without requiring a specific request for said power management data and said geographical location."

No new matter has been added based on this new claim. Support for new claim 125 may be found throughout applicants' specification, and at least with respect to paragraphs 0074 and 0079.

Applicants respectfully submit that new dependent claims 125 is allowable for at least the reasons set forth above with respect to independent claim 92, from which it depends.

Moreover, applicants point out that neither Byers, Leach nor McMillan, whether alone or in combination, teach or suggest “communications of said power management data and said geographical location over said network without requiring a specific request for said power management data and said geographical location.” In particular, Byers conversely waits for “a request from a requesting node” to provide merely geographical information (and not power management data, as noted above). (See, e.g., Byers’ Abstract, col. 1, lines 60-62; claim 1). Accordingly, Byers clearly teaches away from applicants’ claim 125.

## CONCLUSION

Each of the rejections in the Office Action dated September 3, 2008 has been addressed and no new matter has been added. Applicants submit that all of the pending claims 92-97, 100-106, 109-115 and 118-125 are in condition for allowance and notice to this effect is respectfully requested. The Examiner is invited to contact the undersigned attorney if such communication would expedite the prosecution of this application.

Respectfully submitted,



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Dated: December 3, 2008

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